SPECIAL PUBLIC NOTICE

Nationwide Permits for Arizona

Including:

- General Conditions
- Regional Conditions
- 401 Water Quality Certifications (State and Tribal)

US Army Corps of Engineers
Los Angeles District
Regulatory Division/Arizona Branch

This special public notice contains all terms and conditions for the Section 404 (Clean Water Act) nationwide permit program in Arizona. The "References" section of this public notice lists all of the documents that establish or modify the current nationwide permit program in Arizona. This special public notice does not add, delete, or modify any terms or conditions of the nationwide permit program. Updated material will be posted on the internet: http://www.spl.usace.army.mil/regulatory. Questions regarding this public notice may be directed to:

US Army Corps of Engineers
Regulatory Division, Arizona Branch
3636 N Central Ave, Suite 900
Phoenix, AZ 85012-1939

(602) 640-5385
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A. Nationwide Permits

1. Aids to Navigation

The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard (see 33 CFR, chapter I, subchapter C, part 66). (Section 10)

401 Certification - Not applicable.

2. Structures in Artificial Canals

Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized (see 33 CFR 322.5(g)). (Section 10)

401 Certification - Not applicable.

3. Maintenance

(a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.
(b) This NWP also authorizes the removal of accumulated sediments and debris in the vicinity of and within existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the district engineer under separate authorization. The placement of riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the district engineer.
(c) This NWP also authorizes temporary structures, fills, and work necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.
(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation or beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.
Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). Where maintenance dredging is proposed, the pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Sections 10 and 404)
Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities

Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, and clam and oyster digging, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks. (Sections 10 and 404)

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

5. Scientific Measurement Devices

Devices, whose purpose is to measure and record scientific data, such as staff gages, tide gages, water recording devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards. (Sections 10 and 404)

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Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions page 41) except for those devices that include dredging or filling (individual certification required). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

6. Survey Activities

Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, and historic resources surveys. For the purposes of this NWP, the term ''exploratory trenching'' means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This NWP authorizes the construction of temporary pads, provided the discharge does not exceed 25 cubic yards. Discharges and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under Section 402 of the Clean Water Act. (Sections 10 and 404)

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

7. Outfall Structures and Associated Intake Structures

Activities related to the construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted by, or that are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (Section 402 of the Clean Water Act). The construction of intake structures is not authorized by this NWP, unless they are directly associated with an authorized outfall structure.
Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

8. Oil and Gas Structures on the Outer Continental Shelf

Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of the Interior, Minerals Management Service. Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(l). The district engineer will review such proposals to ensure compliance with the provisions of the fairway regulations in 33 CFR 322.5(l). Any Corps review under this NWP will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f). Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR part 334, nor will such structures be permitted in EPA or Corps designated dredged material disposal areas.
Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Section 10)

401 Certification - Not applicable.

9. Structures in Fleeting and Anchorage Areas

Structures, buoys, floats and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where the U.S. Coast Guard has established such areas for that purpose. (Section 10)

401 Certification - Not applicable.

10. Mooring Buoys

Non-commercial, single-boat, mooring buoys. (Section 10)

401 Certification - Not applicable.

11. Temporary Recreational Structures

Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use, provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir manager must approve each buoy or marker individually. (Section 10)

401 Certification - Not applicable.

12. Utility Line Activities

Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than ½ acre of waters of the United States.

Utility lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A ''utility line'' is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term ''utility line'' does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2 acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the total discharge from a single and complete project does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters

for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP also authorizes temporary structures, fills, and work necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) The activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1⁄10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 27.) (Sections 10 and 404)

Note 1: Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters), copies of the pre-construction notification and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, accordance with the requirements for temporary fills.

Note 3: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

401 Certification

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Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required

White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

13. Bank Stabilization

Bank stabilization activities necessary for erosion prevention, provided the activity meets all of the following criteria:
(a) No material is placed in excess of the minimum needed for erosion protection;
(b) The activity is no more than 500 feet in length along the bank, unless this criterion is waived in writing by the district engineer;
(c) The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line, unless this criterion is waived in writing by the district engineer;
(d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless this criterion is waived in writing by the district engineer;
(e) No material is of the type, or is placed in any location, or in any manner, to impair surface water flow into or out of any water of the United States;
(f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and, (g) The activity is not a stream channelization activity.
Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) Involves discharges into special aquatic sites; (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot along the bank below the plane of the ordinary high water mark or the high tide line. (See general condition 27.) (Sections 10 and 404)

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Individual certification required if bank stabilization activity is greater than 500 linear feet or the activity discharge exceeds an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark; otherwise, conditionally certified (all applicable general 401 conditions page 41).
Note: Conditional certification only applies when none of the other 401 certification categories apply.

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

14. Linear Transportation Projects

Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than ½-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than ⅓-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The loss of waters of the United States exceeds ⅒ acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 27.) (Sections 10 and 404)

Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

401 Certification

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Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
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All other reservations – Contact EPA Region IX

15. U.S. Coast Guard Approved Bridges

Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills, provided such discharges have been authorized by the U.S. Coast Guard as part of the bridge permit. Causeways and approach fills are not included in this NWP and will require a separate section 404 permit. (Section 404)

401 Certification

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Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

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Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

16. Return Water From Upland Contained Disposal Areas

Return water from an upland contained dredged material disposal area. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs on the upland and does not require a section 404 permit. This NWP satisfies the technical requirement for a section 404 permit for the return water where the quality of the return water is controlled by the state through the section 401 certification procedures. The dredging activity may require a section 404 permit (33 CFR 323.2(d)), and will require a section 10 permit if located in navigable waters of the United States. (Section 404)

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required

All other reservations – Contact EPA Region IX

17. Hydropower Projects

Discharges of dredged or fill material associated with hydropower projects having: (a) Less than 5000 kW of total generating capacity at existing reservoirs, where the project, including the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; or (b) a licensing exemption granted by the FERC pursuant to Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and Section 30 of the Federal Power Act, as amended.
Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Section 404)

401 Certification

All state waters: Individual Certification required.
Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

18. Minor Discharges

Minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:
(a) The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;
(b) The discharge will not cause the loss of more than 1/10 acre of waters of the United States; and
(c) The discharge is not placed for the purpose of a stream diversion.
Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge is in a special aquatic site, including wetlands. (See general condition 27.) (Sections 10 and 404)

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required

White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

19. Minor Dredging

Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the United States (i.e., section 10 waters). This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the United States (see 33 CFR 322.5(g)). (Sections 10 and 404)

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

20. Oil Spill Cleanup

Activities required for the containment and cleanup of oil and hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR 112.3 and any existing state contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action. This NWP also authorizes activities required for the cleanup of oil releases in waters of the United States from electrical equipment that are governed by EPA's polychlorinated biphenyl spill response regulations at 40 CFR part 761. (Sections 10 and 404)

401 Certification

All state waters: Conditionally certified (all applicable general 401 conditions (page 41) except 3, 4 and 14) if on site response activity started within 14 calendar days of discovery of spill/release; otherwise individual certification required.

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required

All other reservations – Contact EPA Region IX

21. Surface Coal Mining Operations

Discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations provided the activities are already authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI), Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977.
Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

401 Certification

All state waters: Individual Certification required

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

22. Removal of Vessels

Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. This NWP does not authorize maintenance dredging, shoal removal, or riverbank snagging.
Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The vessel is listed or eligible for listing in the National Register of Historic Places; or (2) the activity is conducted in a special aquatic site, including coral reefs and wetlands. (See general condition 27.) If condition 1 above is triggered, the permittee cannot commence the activity until informed by the district engineer that compliance with the ''Historic Properties'' general condition is completed. (Sections 10 and 404)
Note 1: If a removed vessel is disposed of in waters of the United States, a permit from the U.S. EPA may be required (see 40 CFR 229.3). If a Department of the Army permit is required for vessel disposal in waters of the United States, separate authorization will be required.
Note 2: Compliance with general condition 17, Endangered Species, and general condition 18, Historic Properties, is required for all NWPs. The concern with historic properties is emphasized in the notification requirements for this NWP because of the likelihood that submerged vessels may be historic properties.

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

23. Approved Categorical Exclusions

Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:
(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 et seq.), that the activity is categorically excluded from environmental documentation, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and
(b) The Office of the Chief of Engineers (Attn: CECW–CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23. The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.
Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters. (Sections 10 and 404)
Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW–CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are the: Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05–07, which is available at: *http://www.usace.army.mil/inet/functions/ cw/cecwo/reg/rglsindx.htm*. Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same Web site.

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

24. Indian Tribe or State Administered Section 404 Programs

Any activity permitted by a state or Indian Tribe administering its own section 404 permit program pursuant to 33 U.S.C. 1344(g)–(l) is permitted pursuant to Section 10 of the Rivers and Harbors Act of 1899. (Section 10)
Note 1: As of the date of the promulgation of this NWP, only New Jersey and Michigan administer their own section 404 permit programs.
Note 2: Those activities that do not involve an Indian Tribe or State section 404 permit are not included in this NWP, but certain structures will be exempted by Section 154 of Pub. L. 94–587, 90 Stat. 2917 (33 U.S.C. 591) (see 33 CFR 322.3(a)(2)).

401 Certification - Not applicable.

25. Structural Discharges

Discharges of material such as concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways, or for general navigation, such as mooring cells, including the excavation of bottom material from within the form prior to the discharge of concrete, sand, rock, etc. This NWP does not authorize filled structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas and other such structures. The structure itself may require a section 10 permit if located in navigable waters of the United States. (Section 404)

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

26. [Reserved]

27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities

Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas and the restoration and enhancement of non-tidal streams and other non-tidal open waters, provided those activities result in net increases in aquatic resource functions and services.
To the extent that a Corps permit is required, activities authorized by this NWP include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and

pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; shellfish seeding; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

This NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services.

Except for the relocation of non-tidal waters on the project site, this NWP does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., stream to wetland or vice versa) or uplands. This NWP does not authorize stream channelization. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Reversion. For enhancement, restoration, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the OSM or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland that has not been abandoned or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity the permittee or the appropriate Federal or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements are applicable to that type of land at the time. The requirement that the activity result in a net increase in aquatic resource functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

Reporting: For those activities that do not require pre-construction notification, the permittee must submit to the district engineer a copy of: (1) The binding wetland enhancement, restoration, or establishment agreement, or a project description, including project plans and location map; (2) the NRCS or USDA Technical Service Provider documentation for the voluntary wetland restoration, enhancement, or establishment action; or (3) the SMCRA permit issued by OSM or the applicable state agency. These documents must be submitted to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP.

Notification. The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27), except for the following activities:

(1) Activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. FWS, NRCS, FSA, NMFS, NOS, or their designated state cooperating agencies;

(2) Voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or

(3) The reclamation of surface coal mine lands, in accordance with an SMCRA permit issued by the OSM or the applicable state agency. However, the permittee must submit a copy of the appropriate documentation. (Sections 10 and 404)

Note: This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee programs. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

401 Certification

All state waters: Individual Certification required.

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

28. Modifications of Existing Marinas

Reconfiguration of existing docking facilities within an authorized marina area. No dredging, additional slips, dock spaces, or expansion of any kind within waters of the United States is authorized by this NWP. (Section 10)

401 Certification - Not applicable.

29. Residential Developments

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision. This NWP authorizes the construction of building foundations and building pads and attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, yards, utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development).

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Subdivisions: For residential subdivisions, the aggregate total loss of waters of United States authorized by this NWP cannot exceed 1/2 acre. This includes any loss of waters of the United States associated with development of individual subdivision lots.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Individual certification required if loss is greater than 300 lineal feet of any stream bed or greater than 0.1 acre aggregate loss; otherwise, conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

30. Moist Soil Management for Wildlife

Discharges of dredged or fill material into non-tidal waters of the United States and maintenance activities that are associated with moist soil management for wildlife for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to, plowing or discing to impede succession, preparing seed beds, or establishing fire breaks. Sufficient riparian areas must be maintained adjacent to all open water bodies, including streams to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, or similar features associated with the management areas. The activity must not result in a net loss of aquatic resource functions and services. This NWP does not authorize the conversion of wetlands to uplands, impoundments, or other open water bodies. (Section 404).
Note: The repair, maintenance, or replacement of existing water control structures or the repair or maintenance of dikes may be authorized by NWP 3. Some such activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

31. Maintenance of Existing Flood Control Facilities

Discharges of dredged or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/ detention basins, levees, and channels that: (i) were previously authorized by the Corps by individual permit, general permit, by 33 CFR 330.3, or did not require a permit at the time they were constructed, or (ii) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance

activities that are conducted within the ‘‘maintenance baseline,’’ as described in the definition below. Discharges of dredged or fill materials associated with maintenance activities in flood control facilities in any watercourse that have previously been determined to be within the maintenance baseline are authorized under this NWP. This NWP does not authorize the removal of sediment and associated vegetation from natural water courses except when these activities have been included in the maintenance baseline. All dredged material must be placed in an upland site or an authorized disposal site in waters of the United States, and proper siltation controls must be used.
Maintenance Baseline: The maintenance baseline is a description of the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, subject to any case-specific conditions required by the district engineer. The district engineer will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels, but which are part of the facility. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the approved and constructed design capacities of the flood control facility. If no evidence of the constructed capacity exists, the approved capacity will be used. The documentation will also include best management practices to ensure that the impacts to the aquatic environment are minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. Except in emergencies as described below, this NWP cannot be used until the district engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this NWP. This NWP does not authorize maintenance of a flood control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner.
Mitigation: The district engineer will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse environmental impacts are no more than minimal, both individually and cumulatively. Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the district engineer will not delay needed maintenance, provided the district engineer and the permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation. Once the one-time mitigation described above has been completed, or a determination made that mitigation is not required, no further mitigation will be required for maintenance activities within the maintenance baseline. In determining appropriate mitigation, the district engineer will give special consideration to natural water courses that have been included in the maintenance baseline and require compensatory mitigation and/or best management practices as appropriate.
Emergency Situations: In emergency situations, this NWP may be used to authorize maintenance activities in flood control facilities for which no maintenance baseline has been approved. Emergency situations are those which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved. In such situations, the determination of mitigation requirements, if any, may be deferred until the emergency has been resolved. Once the emergency has ended, a maintenance baseline must be established expeditiously, and mitigation, including mitigation for maintenance conducted during the emergency, must be required as appropriate.
Notification: The permittee must submit a pre-construction notification to the district engineer before any maintenance work is conducted (see general condition 27). The pre-construction notification may be for activity-specific maintenance or for maintenance of the entire flood control facility by submitting a five-year (or less) maintenance plan. The pre-construction notification must include a description of the maintenance baseline and the dredged material disposal site. (Sections 10 and 404)

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

32. Completed Enforcement Actions

Any structure, work, or discharge of dredged or fill material remaining in place or undertaken for mitigation, restoration, or environmental benefit in compliance with either:
(i) The terms of a final written Corps non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of Section 404 of the Clean Water Act, provided that:
(a) The unauthorized activity affected no more than 5 acres of non-tidal waters or 1 acre of tidal waters;
(b) The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and
(c) The district engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or
(ii) The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the United States under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or
(iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under Section 311 of the Clean Water Act, Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, Section 312 of the National Marine Sanctuaries Act, Section 1002 of the Oil Pollution Act of 1990, or the Park System Resource Protection Act at 16 U.S.C. 19jj, to the extent that a Corps permit is required.
Compliance is a condition of the NWP itself. Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6(d)(2) and (e). (Sections 10 and 404)

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

33. Temporary Construction, Access, and Dewatering

Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse effects on aquatic resources. Following completion of construction, temporary fill must be entirely removed to upland areas, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)
Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. (Sections 10 and 404)

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

34. Cranberry Production Activities

Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, must not exceed 10 acres of waters of the United States, including wetlands. The activity must not result in a net loss of wetland acreage. This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP, the cumulative total of 10 acres will be measured over the period that this NWP is valid.
Notification: The permittee must submit a pre-construction notification to the district engineer once during the period that this NWP is valid, and the NWP will then authorize discharges of dredge or fill material at an existing operation for the permit term, provided the 10-acre limit is not exceeded. (See general condition 27.) (Section 404)

401 Certification

All state waters: Individual Certification required.

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

35. Maintenance Dredging of Existing Basins

Excavation and removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/ egress, whichever is less, provided the dredged material is deposited at an upland site and proper siltation controls are used. (Section 10)

401 Certification - Not applicable.

36. Boat Ramps

Activities required for the construction of boat ramps, provided the activity meets all of the following criteria:
(a) The discharge into waters of the United States does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or in the form of pre-cast concrete planks or slabs, unless the 50 cubic yard limit is waived in writing by the district engineer;
(b) The boat ramp does not exceed 20 feet in width, unless this criterion is waived in writing by the district engineer;
(c) The base material is crushed stone, gravel or other suitable material;
(d) The excavation is limited to the area necessary for site preparation and all excavated material is removed to the upland; and,
(e) No material is placed in special aquatic sites, including wetlands.
The use of unsuitable material that is structurally unstable is not authorized. If dredging in navigable waters of the United States is necessary to provide access to the boat ramp, the dredging may be authorized by another NWP, a regional general permit, or an individual permit.
Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge into waters of the United States exceeds 50 cubic yards, or (2) the boat ramp exceeds 20 feet in width. (See general condition 27.) (Sections 10 and 404)

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

37. Emergency Watershed Protection and Rehabilitation

Work done by or funded by:
(a) The Natural Resources Conservation Service for a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624);
(b) The U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 509.13);
(c) The Department of the Interior for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3);
(d) The Office of Surface Mining, or states with approved programs, for abandoned mine land reclamation activities under Title IV of the Surface Mining Control and Reclamation Act (30 CFR subchapter R), where the activity does not involve coal extraction; or
(e) The Farm Service Agency under its Emergency Conservation Program (7 CFR part 701).
In general, the prospective permittee should wait until the district engineer issues an NWP verification before proceeding with the watershed protection and rehabilitation activity. However, in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the emergency watershed protection and rehabilitation activity may proceed immediately and the district engineer will consider the information in the pre-construction notification any comments received as a result of agency coordination to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.
Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). (Sections 10 and 404)

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or

½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions (page 41) except 3, 4 and 14) only if site activity (under paragraphs (a), (b), (c) or (e) of this NWP) started within 30 days of event causing damage; otherwise, individual certification required. *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

38. Cleanup of Hazardous and Toxic Waste

Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

Note: Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

401 Certification

All state waters: Conditionally certified (all general 401 conditions page 41) if site activity started within 14 calendar days of discovery of spill/release; otherwise individual certification required.

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

39. Commercial and Institutional Developments

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses, new ski areas, or oil and gas wells is not authorized by this NWP.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Individual certification required if loss is greater than 300 lineal feet of any stream bed or greater than 0.1 acre aggregate loss; otherwise, conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

40. Agricultural Activities

Discharges of dredged or fill material into non-tidal waters of the United States for agricultural activities, including the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities.
This NWP also authorizes the construction of farm ponds in non-tidal waters of the United States, excluding perennial streams, provided the farm pond is used solely for agricultural purposes. This NWP does not authorize the construction of aquaculture ponds.
This NWP also authorizes discharges of dredged or fill material into non-tidal waters of the United States to relocate existing serviceable drainage ditches constructed in non-tidal streams.
The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize the relocation of greater than 300 linear feet of existing serviceable drainage ditches constructed in non-tidal streams, unless for drainage ditches constructed in intermittent and ephemeral streams, this 300 linear foot limit is waived in writing by the district engineer.
Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Section 404)
Note: Some discharges for agricultural activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4). This NWP authorizes the construction of farm ponds that do not qualify for the Clean Water Act Section 404(f)(1)(C) exemption because of the recapture provision at Section 404(f)(2).

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

41. Reshaping Existing Drainage Ditches

Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in waters of the United States, for the purpose of improving water quality by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, and increase uptake of nutrients and other substances by vegetation. The reshaping of the ditch cannot increase drainage capacity beyond the original as-built capacity nor can it expand the area drained by the ditch as originally constructed (i.e., the capacity of the ditch must be the same as originally constructed and it cannot drain additional wetlands or other waters of the United States). Compensatory mitigation is not required because the work is designed to improve water quality.
This NWP does not authorize the relocation of drainage ditches constructed in waters of the United States; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch. This NWP does not authorize stream channelization or stream relocation projects.
Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity, if more than 500 linear feet of drainage ditch will be reshaped. (See general condition 27.) (Section 404)

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Individual certification required if greater than 300 lineal feet of drainage ditches relocated to or otherwise constructed in any stream; otherwise, conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required

White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

42. Recreational Facilities

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of recreational facilities. Examples of recreational facilities that may be authorized by this NWP include playing fields (e.g., football fields, baseball fields), basketball courts, tennis courts, hiking trails, bike paths, golf courses, ski areas, horse paths, nature centers, and campgrounds (excluding recreational vehicle parks). This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity, but it does not authorize the construction of hotels, restaurants, racetracks, stadiums, arenas, or similar facilities.
The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.
Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Section 404)

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Individual certification required if activity causes the loss of greater than 300 lineal feet of any streambed; otherwise, conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

43. Stormwater Management Facilities

Discharges of dredged or fill material into non-tidal waters of the United States for the construction and maintenance of stormwater management facilities, including the excavation of stormwater ponds/facilities, detention basins, and retention basins; the installation and maintenance of water control structures, outfall structures and emergency spillways; and the maintenance dredging of existing stormwater management ponds/ facilities and detention and retention basins.
The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal

wetlands adjacent to tidal waters. This NWP does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams.
Notification: For the construction of new stormwater management facilities, or the expansion of existing stormwater management facilities, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) Maintenance activities do not require pre-construction notification if they are limited to restoring the original design capacities of the stormwater management facility. (Section 404)

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Individual certification required if activity causes the loss of greater than 300 lineal feet of any streambed or greater than 0.1 acre aggregate loss; otherwise, conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

44. Mining Activities

Discharges of dredged or fill material into non-tidal waters of the United States for mining activities, except for coal mining activities. The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.
Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (Sections 10 and 404)

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Individual Certification required except as detailed in specific 401 conditions below.

Specific 401 Conditions:

1. Certification under section 401 of the Clean Water Act is automatically granted for quarrying, crushing and screening of nonmetallic minerals in ephemeral waters if all of the following conditions are satisfied within the ordinary high watermark of jurisdictional waters:
   a. There is no disposal of construction and demolition wastes and contaminated wastewater.
   b. Water for dust suppression, if used, does not contain contaminants that could violate water quality standards.
   c. Pollution from the operation of equipment in the mining area is removed and properly disposed.
   d. Stockpiles of processed materials containing ten percent or more of particles of silt are placed or stabilized to minimize loss or erosion during flow events. As used in this paragraph, "silt" means particles finer than 0.0625 millimeter diameter on a dry weight basis.
   e. Measures are implemented to minimize upstream and downstream scour during flood events to protect the integrity of buried pipelines.
   f. On completion of quarrying operations in an area, areas denuded of shrubs and woody vegetation are revegetated to the maximum extent practicable.

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

45. Repair of Uplands Damaged by Discrete Events

This NWP authorizes discharges of dredged or fill material, including dredging or excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged by storms, floods, or other discrete events. This NWP authorizes bank stabilization to protect the restored uplands. The restoration of the damaged areas, including any bank stabilization, must not exceed the contours, or ordinary high water mark, that existed before the damage occurred. The district engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this NWP. The work must commence, or be under contract to commence, within two years of the date of damage, unless this condition is waived in writing by the district engineer. This NWP cannot be used to reclaim lands lost to normal erosion processes over an extended period.

Minor dredging is limited to the amount necessary to restore the damaged upland area and should not significantly alter the pre-existing bottom contours of the waterbody.

Notification: The permittee must submit a pre-construction notification to the district engineer (see general condition 27) within 12-months of the date of the damage. The pre-construction notification should include documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. (Sections 10 and 404)

Note: Uplands lost as a result of a storm, flood, or other discrete event can be replaced without a section 404 permit, if the uplands are restored to the ordinary high water mark (in non-tidal waters) or high tide line (in tidal waters). (See also 33 CFR 328.5.)

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Individual certification required if site activity not started within 30 days of event causing damage; otherwise conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

46. Discharges in Ditches

Discharges of dredged or fill material into non-tidal ditches that are: (1) Constructed in uplands, (2) receive water from an area determined to be a water of the United States prior to the construction of the ditch, (3) divert water to an area determined to be a water of the United States prior to the construction of the ditch, and (4) are determined to be waters of the United States. The discharge must not cause the loss of greater than one acre of waters of the United States.

This NWP does not authorize discharges of dredged or fill material into ditches constructed in streams or other waters of the United States, or in streams that have been relocated in uplands. This NWP does not authorize discharges of dredged or fill material that increase the capacity of the ditch and drain those areas determined to be waters of the United States prior to construction of the ditch.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Section 404)

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

47. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs

Activities required for the inspection, repair, rehabilitation, or replacement of any currently serviceable structure or fill for pipelines that have been identified by the Pipeline and Hazardous Materials Safety Administration's Pipeline Safety Program (PHP) within the U.S. Department of Transportation as time-sensitive (see 49 CFR parts 192 and 195) and additional maintenance activities done in conjunction with the time-sensitive inspection and repair activities. All activities must meet the following criteria:
(a) Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable when temporary structures, work and discharges, including cofferdams, are necessary for construction activities or access fills or dewatering of construction sites;
(b) Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect);
(c) Temporary fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate;
(d) In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench so that there is no change in preconstruction contours;
(e) To the maximum extent practicable, the restoration of open waters must be to the pre-construction course, condition, capacity, and location of the waterbody;
(f) Any exposed slopes and stream banks must be stabilized immediately upon completion of the project;
(g) Additional maintenance activities done in conjunction with the time-sensitive inspection or repair must not result in additional losses of waters of the United States; and,
(h) The permittee is a participant in the Pipeline Repair and Environmental Guidance System (PREGS).
Reporting: The permittee must submit a post construction report to the PHP within seven days after completing the work. The report must be submitted electronically to PHP via PREGS. The report must contain the following information: Project sites located in waters of the United States, temporary access routes, stream dewatering sites, temporary fills and temporary structures identified on a map of the pipeline corridor; photographs of the pre- and post-construction work areas located in waters of the United States; and a list of best management practices employed for each pipeline segment shown on the map. (Section 10 and 404)
Note: Division engineers may modify this NWP by adding regional conditions to protect the aquatic environment, as long as those regional conditions do not require pre-construction notification or other actions that would delay time sensitive inspections and repairs. Examples of appropriate regional conditions include best management practices.

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required

White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

48. Existing Commercial Shellfish Aquaculture Activities

This NWP authorizes the installation of buoys, floats, racks, trays, nets, lines, tubes, containers, and other structures necessary for the continued operation of the existing commercial aquaculture activity. This NWP also authorizes discharges of dredged or fill material necessary for shellfish seeding, rearing, cultivating, transplanting, and harvesting activities. Rafts and other floating structures must be securely anchored and clearly marked.
This NWP does not authorize new operations or the expansion of the project area for an existing commercial shellfish aquaculture activity. This NWP does not authorize the cultivation of new species (i.e., species not previously cultivated in the waterbody). This NWP does not authorize attendant features such as docks, piers, boat ramps, stockpiles, staging areas, or the deposition of shell material back into waters of the United States as waste.
Reporting: For those activities that do not require pre-construction notification, the permittee must submit a report to the district engineer that includes the following information: (1) The size of the project area for the commercial shellfish aquaculture activity (in acres); (2) the location of the activity; (3) a brief description of the culture method and harvesting method(s); (4) the name(s) of the cultivated species; and (5) whether canopy predator nets are being used. This is a subset of the information that would be required for pre-construction notification. This report may be provided by letter or using an optional reporting form provided by the Corps. Only one report needs to be submitted during the period this NWP is valid, as long as there are no changes to the operation that require pre-construction notification. The report must be submitted to the district engineer within 90 days of the effective date of this NWP.
Notification: The permittee must submit a pre-construction notification to the district engineer if: (1) The project area is greater than 100 acres; or (2) there is any reconfiguration of the aquaculture activity, such as relocating existing operations into portions of the project area not previously used for aquaculture activities; or (3) there is a change in species being cultivated; or
(4) there is a change in culture methods (e.g., from bottom culture to off-bottom culture); or (5) dredge harvesting, tilling, or harrowing is conducted in areas inhabited by submerged aquatic vegetation. (See general condition 27.) (Sections 10 and 404)
Note: The permittee should notify the applicable U.S. Coast Guard office regarding the project.

401 Certification

303[d]-impaired waters (see Water Quality Definitions p. 44-46): For projects on a waterbody with an impaired reach, if the project impacts the listed waterbody within 800 meters (or ½ mile) downstream of an impaired reach to within 1600 meters (or 1 mile) upstream of an impaired reach: Individual Certification required.

Tributaries to 303[d]-impaired waters: For projects on a tributary to a waterbody listed as impaired, if the tributary mouth is on an impaired reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Outstanding Arizona Waters (a.k.a. "unique Waters") (see Water Quality Definitions p. 44-46): For projects on a designated Outstanding Arizona Water, if the project impacts the designated waterbody within 800 meters (or ½ mile) downstream of a designated reach to within 1600 meters (or 1 mile) upstream of a designated reach: Individual Certification required.

Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, if the tributary mouth is on a designated reach and the project impacts the tributary within 1600 meters (or 1 mile) of its mouth: Individual Certification required.

Lake (see Water Quality Definitions p. 44-46): Individual Certification required.

Other waters: Conditionally certified (all applicable general 401 conditions page 41). *Note: Conditional certification only applies when none of the other 401 certification categories apply.*

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

49. Coal Remining Activities

Discharges of dredged or fill material into non-tidal waters of the United States associated with the remining and reclamation of lands that were previously mined for coal, provided the activities are already authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI) Office of Surface Mining (OSM), or by states with approved programs under Title IV or Title V of the Surface Mining Control and Reclamation Act of 1977. Areas previously mined include reclaimed mine sites, abandoned mine land areas, or lands under bond forfeiture contracts. The permittee must clearly demonstrate to the district engineer that the reclamation plan will result in a net increase in aquatic resource functions. As part of the project, the permittee may conduct coal mining activities in an adjacent area, provided the newly mined area is less than 40 percent of the area being remined plus any unmined area necessary for the reclamation of the remined area.
Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

401 Certification

All state waters: Individual Certification required.

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

50. Underground Coal Mining Activities

Discharges of dredged or fill material into non-tidal waters of the United States associated with underground coal mining and reclamation operations provided the activities are authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI), Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize coal preparation and processing activities outside of the mine site.
Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 27.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (Sections 10 and 404)
Note: Coal preparation and processing activities outside of the mine site may be authorized by NWP 21.

401 Certification

All state waters: Individual Certification required.

Tribal Waters: Hualapai Tribe – Individual Certification required
Navajo Nation – Individual Certification required
White Mountain Apache Tribe – Individual Certification required
All other reservations – Contact EPA Region IX

B. Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/ or Coastal Zone Management Act consistency for an NWP.

1. Navigation
(a) No activity may cause more than a minimal adverse effect on navigation.
(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements
No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

3. Spawning Areas
Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas
Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds
No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48.

6. Suitable Material
No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. Water Supply Intakes.
No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments.
If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows
To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains.
The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment
Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls
Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. Removal of Temporary Fills

Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance

Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

15. Wild and Scenic Rivers

No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a ''study river'' for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

16. Tribal Rights

No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

17. Endangered Species

(a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which ''may affect'' a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district engineer will determine whether the proposed activity ''may affect'' or will have ''no effect'' to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have ''no effect'' on listed species or critical habitat, or until Section 7 consultation has been completed.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the ''take'' of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with ''incidental take'' provisions, etc.) from the U.S. FWS or the NMFS, both lethal and non-lethal ''takes'' of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at http://www.fws.gov/ and http://www.noaa.gov/fisheries.html respectively.

18. Historic Properties

(a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.
(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h–2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

19. Designated Critical Resource Waters

Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for comment.
(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.
(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

20. Mitigation

The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:
(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).
(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.
(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require pre-construction notification, unless the district engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.
(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.
(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of ½ acre, it cannot be used to authorize any project resulting in the loss of greater than ½ acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.
(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.
(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

21.Water Quality

Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

22. Coastal Zone Management

In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

23. Regional and Case-By-Case Conditions

The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

24. Use of Multiple Nationwide Permits

The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

25. Transfer of Nationwide Permit Verifications

If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

‘‘When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.’’

_____

(Transferee)

_____

(Date)

26. Compliance Certification

Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;

(b) A statement that any required mitigation was completed in accordance with the permit conditions; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

27. Pre-Construction Notification

(a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, as a general rule, will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) Forty-five calendar days have passed from the district engineer’s receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that is ‘‘no effect’’ on listed species or ‘‘no potential to cause effects’’ on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot begin the activity until the

district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).
(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information:
(1) Name, address and telephone numbers of the prospective permittee;
(2) Location of the proposed project;
(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision.);
(4) The PCN must include a delineation of special aquatic sites and other waters of the United States on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;
(5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.
(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and
(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.
(c) *Form of Pre-Construction Notification:* The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.
(d) *Agency Coordination:* (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.
(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than ½-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.
(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.
(4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.
(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.
(e) *District Engineer's Decision:* In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory

mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either:

(1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

28. Single and Complete Project

The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

C. Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

D. Regional Conditions

Of the ten regional conditions effective within the Los Angeles District of the Corps of Engineers, three apply to projects within Arizona (2, 3, and 4). The remaining conditions apply to specific geographic areas, resources or species in California.

<u>The following regional conditions must be followed in order for any authorization by an NWP to be valid in the State of Arizona:</u>

Regional Condition 2: For the State of Arizona and the Mojave and Sonoran (Colorado) desert regions of California in Los Angeles District (generally north and east of the San Gabriel, San Bernardino, San Jacinto, and Santa Rosa mountain ranges, and south of Little Lake, Inyo County), no nationwide permit, except Nationwide Permits 1 (Aids to Navigation), 2 (Structures in Artificial Canals), 3 (Maintenance), 4 (Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities), 5 (Scientific Measurement Devices), 6 (Survey Activities), 9 (Structures in Fleeting and Anchorage Areas), 10 (Mooring Buoys), 11 (Temporary Recreational Structures), 20 (Oil Spill Cleanup), 22 (Removal of Vessels), 27 (Stream and Wetland Restoration Activities), 30 (Moist Soil Management for Wildlife), 31 (Maintenance of Existing Flood Control Projects), 32 (Completed Enforcement Actions), 35 (Maintenance Dredging of Existing Basins), 37 (Emergency Watershed Protection and Rehabilitation), 38 (Cleanup of Hazardous and Toxic Waste) and 47 (Pipeline Safety Program Designated Time Sensitive Inspections and Repairs), or other nationwide or regional general permits that specifically authorize maintenance of previously authorized structures or fill, can be used to authorize the discharge of dredged or fill material into a jurisdictional special aquatic site as defined at 40 CFR Part 230.40-45 (sanctuaries and refuges, wetlands, mudflats, vegetated shallows, coral reefs, and riffle-and-pool complexes).

Regional Condition 3: For all projects proposed for authorization by nationwide or regional general permits where prior notification to the district engineer is required, applicants must provide color photographs or color photocopies of the project area taken from representative points documented on a site map. Pre-project photographs and the site map would be provided with the permit application. Photographs should represent conditions typical or indicative of the resources before impacts.

Regional Condition 4: Notification pursuant to general condition 27 shall be required for projects in all special aquatic sites as defined at 40 CFR Part 230.40-45 (sanctuaries and refuges, wetlands, mudflats, vegetated shallows, coral reefs, and riffle-and-pool complexes), and in all perennial waterbodies in the State of Arizona and the Mojave and Sonoran (Colorado) desert regions of California in Los Angeles District (generally north and east of the San Gabriel, San Bernardino, San Jacinto, and Santa Rosa mountain ranges, and south of Little Lake, Inyo County), excluding the Colorado River from Davis Dam downstream to the north end of Topock and downstream of Imperial Dam (Federal Register dated March 12, 2007 (72 FR 11092) - regional conditions requiring notification do not apply to Nationwide Permit 47).

E. Water Quality Certification

Section 401 Water Quality Certification (401 Certification) is mandatory for any activity that requires a Section 404 permit. A 401 Certification is required prior to discharging any dredged or fill material into a water of the United States. These 401 certifications and conditions will remain in effect until March 18, 2012. However, the Corps has the authority to revise, suspend or revoke any NWP prior to March 18, 2012, if conditions warrant. The five agencies (ADEQ, EPA, White Mountain Apache Tribe, Navajo Nation, and Hualapai Tribe) with 401 Certification authority in Arizona have made the following 401 Certification decisions:

Arizona Department of Environmental Quality: By letter dated May 14, 2007, ADEQ provided 401 certification decisions for the Nationwide Permit Program. See each nationwide permit for water quality decisions. Conditions are listed below. An application form for Individual 401 Certification may be found at http://www.azdeq.gov/environ/water/permits/download/401app2.pdf

Arizona Department of Environmental Quality
Surface Water Section/401 Certifications
1110 W. Washington St.
Phoenix, AZ 85007

Contact:
Bob Scalamera
(602) 771-4502
E-mail: rs3@azdeq.gov

Environmental Protection Agency: By letter dated January 17, 2007, EPA Region IX provided 401 certification decisions for the Nationwide Permit Program. These decisions apply to all tribal land within the state of Arizona except the Fort Apache Indian Reservation, Navajo Reservation and Hualapai Reservation. EPA's letter is attached in its entirety as Appendix A.

US Environmental Protection Agency
Region IX WTR-8
75 Hawthorne Street
San Francisco, CA 94105

Contact:
Jason Brush
(415) 972-3483
Fax: (415) 747-3537
E-mail: brush.jason@epa.gov

Hualapai Tribe: By letter dated May 25, 2007, The Hualapai Tribe provided notification that individual certification would be required on lands administered by the Hualapai Tribe. The applicant must apply directly to the Hualapai Tribe and obtain an Individual Certification or waiver prior to initiating the permitted activity. After the applicant obtains a 401 Certification or waiver, a copy shall be provided to the Corps of Engineers.

Hualapai Tribe
PO Box 300
Peach Springs, AZ 86434

Contact:
Alex Cabillo
(928) 769-2254

Navajo Nation: By letter dated March 16, 2007, The Navajo Nation provided notification that individual certification would be required on lands administered by the Navajo Nation. The applicant must apply directly to the Navajo Nation and obtain an Individual Certification or waiver prior to initiating the permitted activity. After the applicant obtains a 401 Certification or waiver, a copy shall be provided to the Corps of Engineers.

Navajo Nation Environmental Protection Agency
PO Box 339
Window Rock, Navajo Nation, AZ 86515

Contact:
Patrick Antonio
(928) 871-7185
Fax: (928) 871-7996

White Mountain Apache Tribe: By letter dated April 27, 2007, the White Mountain Apache Tribe provided notification that individual certification would be required on the Fort Apache Indian Reservation. The applicant must apply directly to the White Mountain Apache Tribe and obtain an Individual Certification or waiver prior to initiating the permitted activity. After the applicant obtains a 401 Certification or waiver, a copy shall be provided to the Corps of Engineers.

White Mountain Apache Tribe
ATTN: Environmental Planning Office
PO Box 700
Whiteriver, AZ 85941

Contact:
Cheryl Pailzote
(928) 338-2475

State of Arizona 401 Water Quality Conditions (for non-tribal waters)

Except as noted, the following 401 General Conditions apply to all waters of the U.S. (WUS) and all applicable NWP:

1. Any discharge (including runoff or seepage) occurring as a result of activities certified for the subject project shall not cause a violation of surface water quality standards for any WUS. Applicability of this condition is as defined in A.A.C. R18-11-102.
2. This certification does not authorize the discharge of process water, material processing residues, wastewater or other residual material to any WUS.
3. Activities herein certified shall be performed during periods of low flow (baseflow or less) in any watercourse or other WUS, or no flow in the case of ephemeral and intermittent waterbodies.
4. If activities are likely to create an erosion or sedimentation problem, operations shall cease until the problem is resolved or until reasonable control measures have been undertaken.
5. Erosion control, sediment control and/or bank protection measures shall be installed before construction and pre-operation activities, and shall be maintained as necessary during construction and post-construction periods to minimize channel or bank erosion, soil loss and sedimentation. Control measures shall not be constructed of uncemented or unconfined soil, or other easily transportable (by flow) materials.
6. The applicant is responsible for ensuring construction material and/or fill including, but not limited to: rock, gabion fill or other uncemented channel-lining materials, placed within the Ordinary High Water Mark (OHWM) of any WUS, shall not include materials that can cause or contribute to an exceedence of Arizona Water Quality Standards for Surface Waters (18, A.A.C., 11, Article 1). Any fill material washing must occur outside of the floodplain of any WUS prior to placement and the rinseate from such washing shall be contained and settled or otherwise prevented from contributing sediment or causing erosion to any WUS. Fill placed in locations subject to scour shall contain not more than ten percent (10%) on a dry weight basis of particles finer than 0.25 mm diameter (passing a No. 60 sieve).
7. Any dredged material is to be placed and retained in areas outside the OHWM of any WUS. Runoff from materials deposited outside the OHWM is to be settled, filtered or otherwise treated to prevent escape of pollutants (including sediment) to any WUS.
8. Except as otherwise allowed herein, upon completion of construction the applicant shall ensure no adverse change due to the subject project has occurred in the stability (with respect to stream geometry, erosion and sedimentation) of any WUS, including upstream and downstream from the project. If such change has occurred, the applicant shall take steps to restore the pre-project stability of any impacted segments.
9. Except where the activities certified herein are intended to permanently alter any WUS, all disturbed areas between the OHWM shall be restored to preconstruction conditions. Denuded areas shall be revegetated as soon as possible with native and/or salvaged plants and seed. Vegetation should be maintained on unarmored banks and slopes to stabilize soil and prevent erosion.

10. Where needed to prevent erosion/sedimentation, flows unimpacted by the subject project shall be diverted around work operations, and material and equipment storage areas. Permanent and temporary access roadways, staging areas and material stockpiles shall be designed or located to allow storm flows to pass unimpeded. Except as otherwise allowed herein, when flow is present in any wash or other WUS within the project area, the applicant and any contractor will not impede, restrict, or stop the flow by any means.
11. Permanent and temporary pipes and culverted crossings and pads shall be adequately sized to handle expected flow and properly set with end section, splash pads, or headwalls that dissipate water energy to control erosion. Culverted and unculverted crossings and pads shall be constructed so as to accommodate the overtopping of the fill by streamflow and armored to prevent erosion of the fill.
12. Acceptable construction materials that will or may contact water in any WUS are: crushed stone, native fill (meeting the requirements in 401 General Condition 6) concrete, steel, plastic, or aluminum and other materials specifically approved in writing by ADEQ.
13. Silt laden or turbid water resulting from project activity shall be settled, filtered or otherwise treated prior to discharge to ensure no violation of Arizona Surface Water Quality Standards in any WUS.
14. When flow greater than described in 401 General Condition 3 above is present within the project area, all activities certified herein shall cease and construction equipment and materials easily transported by flow will be moved outside the flow area and the OHWM of any WUS. If such movement cannot be accomplished rapidly enough to prevent pollution of a WUS, measures shall be taken to prevent transport of sediment or other pollutants out of the construction area or into any WUS.
15. Work shall be conducted and monitored to ensure that pollution from the activities certified herein including, but not limited to: earthwork, concrete mixing and placement, detention ponds, and equipment maintenance and washing does not drain into any WUS.
16. If water is used for dust suppression, it shall not contain contaminants that could violate Arizona Surface Water Quality Standards of any WUS.
17. The applicant will erect any barriers, covers, shields and other protective devices as necessary to prevent any construction materials, equipment or contaminants/pollutants from falling, being thrown or otherwise entering any flowing WUS.
18. Upon completion of the activities certified herein, areas within the OHWM of all WUS at the project site shall be promptly cleared of all false work, piling, construction residues, equipment, debris or other obstructions. Any debris including, but not limited to: soil, silt, sand, rubbish, cement, bituminous material, oil or petroleum products, organic materials, tires or batteries, derived from the activities certified herein shall not be stored at any site where it may be washed into a WUS and shall be properly disposed of after completion of the work.
19. The applicant must designate area(s) for equipment staging and storage located where runoff from these activities cannot enter any WUS. Any equipment maintenance, washing or fueling that cannot be done offsite will be done here. Material specifically manufactured and sold as spill adsorbent/absorbent will be on hand to control small spills. All equipment and workboats shall be inspected for leaks daily and prior to use. All leaks shall be repaired immediately. All equipment and workboats will be steam cleaned prior to use in any WUS with flow.
20. The applicant shall have a spill containment plan onsite to ensure that pollutants are contained, removed and properly disposed of. In addition, the applicant must designate areas, located where runoff from these activities cannot enter any WUS, for chemical and petroleum storage, and solid waste containment. All materials stored onsite will be stored in appropriate containers or packaging. Any pollutant produced by activities certified herein shall be properly disposed of in accordance with applicable regulations. A spill response kit will be maintained in this (these) area(s) to mitigate a potential spill. The kit will include material specifically manufactured and sold as spill adsorbent/absorbent including booms. The applicant will ensure that whenever there is activity on the site, that there are personnel on site trained in the proper response to spills and the use of spill response equipment.
21. If fully, partially or occasionally submerged structures are constructed of cast-in-place concrete instead of pre-cast concrete planks or slabs, applicant will take steps; e.g., sheet piling or temporary dams (except for NWP 33 & 15, filled cofferdams are not allowed), to prevent contact between water (instream and runoff) and the concrete until it cures and until any curing agents have evaporated or otherwise cease to be available; i.e.,

are no longer a pollutant threat. Where possible, construction work will be during extreme low water conditions or at a time and season that ensures all work is done in the dry.

22. For portions of the project utilizing potable water or groundwater for irrigation, direct runoff of irrigation water and overflows from runoff detention and/or retention areas into washes shall be limited to the extent practicable and shall not cause downstream erosion or flooding.

23. For portions of the project utilizing reclaimed wastewater for irrigation, direct runoff of irrigation water and overflow from retention/detention structures or storage impoundments into WUS is prohibited without the proper permits including, but not limited to, Arizona's Reclaimed Wastewater Permit and, if within the wetted area of a 25-year flood event (or within the floodplain in some cases), a AZPDES permit.

24. Fertilizer, herbicide and insecticide chemicals used for development of vegetated areas shall be selected based on minimum environmental impacts and approved for the intended use. Application rates printed on the product labels shall be strictly followed. Excess chemicals shall not be applied on recently treated areas and must either be stored, used elsewhere or disposed of (in any case, in accordance with all applicable regulations).

Water Quality Definitions

303[d]-listed Impaired Waters: These are waterbodies that as a result of the CWA 305[b] process are listed under CWA 303[d] as impaired; i.e., consistently not meeting water quality standards, and as a result merit special attention. The complete current 303[d] list of Impaired Waters is available on ADEQ's website: http://www.azdeq.gov/environ/water/assessment/assess.html
(401 conditions herein are meant to apply to waterbodies on the current, not draft, list)

Lake: The following are lakes which require an individual 401 certification for activities undertaken via a NWP:

Apache County

• Becker Lake	Lat.: 34° 9' 14.4"	Long.: 109° 18' 18.0"
• Carnero Lake	Lat.: 34° 6' 57.6"	Long.: 109° 31' 40.8"
• Lyman Lake	Lat.: 34° 21' 28.8"	Long.: 109° 21' 28.8"

Cochise County

• Parker Canyon Lake	Lat.: 31° 25' 33.6"	Long.: 110° 27' 14.4"

Coconino County

• Ashurst Lake	Lat.: 35° 1' 08.4"	Long.: 111° 24' 10.8"
• Bear Canyon Lake	Lat.: 34° 24' 10.8"	Long.: 111° 0' 10.8"
• Blue Ridge Reservoir	Lat.: 34° 33' 14.4"	Long.: 111° 11' 02.4"
• Boot Lake	Lat.: 34° 58' 51.6"	Long.: 111° 19' 58.8"
• Chevelon Canyon Lake	Lat.: 34° 30' 39.6"	Long.: 110° 49' 26.4"
• Kinnikinick Lake	Lat.: 34° 53' 52.8"	Long.: 111° 18' 21.6"
• Lake Mary, Lower	Lat.: 35° 6' 21.6"	Long.: 111° 34' 19.2"
• Lake Mary, Upper	Lat.: 35° 4' 44.4"	Long.: 111° 31' 55.2"
• Long Lake	Lat.: 34° 46' 44.4"	Long.: 111° 12' 0.0"
• Long Lake	Lat.: 35° 0' 0.0"	Long.: 111° 20' 60.0"
• Mormon Lake	Lat.: 34° 56' 38.4"	Long.: 111° 27' 10.8"
• Odell Lake	Lat.: 34° 56' 02.4"	Long.: 111° 37' 51.6"
• Soldier Annex Lake	Lat.: 34° 47' 13.2"	Long.: 111° 13' 48.0"
• Soldier Lake	Lat.: 34° 47' 13.96"	Long.: 111° 13' 48.0"
• Steel Dam Lake	Lat.: 35° 13' 37.2"	Long.: 112° 24' 50.4"
• Stone Dam Lake	Lat.: 35° 13' 37.2"	Long.: 112° 24' 14.4"
• Stoneman Lake	Lat.: 34° 46' 44.4"	Long.: 111° 31' 04.8"
• Whitehorse Lake	Lat.: 35° 7' 01.2"	Long.: 112° 0' 46.8"

• Woods Canyon Lake	Lat.: 34° 20’ 06.0”	Long.: 110° 56’ 34.8”
Gila County		
• Roosevelt Lake	Lat.: 33° 40’ 44.4”	Long.: 111° 9’ 14.4”
La Paz County		
• Alamo Lake	Lat.: 34° 14’ 45.6”	Long.: 113° 34’ 58.8”
Maricopa County		
• Apache Lake	Lat.: 33° 35’ 31.2”	Long.: 111° 20’ 31.2”
• Bartlett Lake	Lat.: 33° 49’ 01.2”	Long.: 111° 37’ 44.4”
• Canyon Lake	Lat.: 33° 32’ 38.2”	Long.: 111° 26’ 06.1”
• Lake Pleasant	Lat.: 33° 51’ 14.4”	Long.: 112° 16’ 15.6”
• Painted Rock Borrow Pit	Lat.: 33° 4’ 58.8”	Long.: 113° 1’ 19.2”
• Painted Rock Reservoir	Lat.: 33° 4’ 15.6”	Long.: 113° 0’ 28.8”
• Roosevelt Lake	Lat.: 33° 40’ 44.4”	Long.: 111° 9’ 14.4”
• Saguaro Lake	Lat.: 33° 34’ 01.2”	Long.: 111° 32’ 06.0”
Mojave County		
• Alamo Lake	Lat.: 34° 14’ 45.6”	Long.: 113° 34’ 58.8”
Navajo County		
• Rainbow Lake	Lat.: 34° 9’ 03.6”	Long.: 109° 59’ 02.4”
• Show Low Lake	Lat.: 34° 11’ 24.0”	Long.: 109° 59’ 56.4”
Pima County		
• Arivaca Lake	Lat.: 31° 31’ 51.6”	Long.: 111° 15’ 03.6”
Santa Cruz County		
• Arivaca Lake	Lat.: 31° 31’ 51.6”	Long.: 111° 15’ 03.6”
• Patagonia Lake	Lat.: 31° 29’ 31.2”	Long.: 110° 52’ 01.2”
• Peña Blanca Lake	Lat.: 31° 24’ 10.8”	Long.: 111° 5’ 02.4”
Yavapai County		
• Granite Basin Lake	Lat.: 34° 37’ 02.1”	Long.: 112° 32’ 56.5”
• Horseshoe Reservoir	Lat.: 33° 58’ 58.8”	Long.: 111° 42’ 28.8”
• Horsethief Lake	Lat.: 34° 9’ 43.2”	Long.: 112° 17’ 56.4”
• Lake Pleasant	Lat.: 33° 51’ 14.4”	Long.: 112° 16’ 15.6”
• Lynx Lake	Lat.: 34° 31’ 08.4”	Long.: 112° 23’ 06.0”
• Peck's Lake	Lat.: 34° 47’ 06.0”	Long.: 112° 2’ 31.2”
• Watson Lake	Lat.: 34° 35’ 16.8”	Long.: 112° 25’ 04.8”

Other Waters: Any waters of the United States, occurring on non-tribal land, that does not fall within one of the other definitions listed here.

Outstanding Arizona Waters: ADEQ is in the process of the triennial review of surface water quality standards (18 Arizona Administrative Code 11, Art 1) and among other things, this entails an updating of the Unique Waters of the state. A definite change is the name: instead of “Unique Waters”, these bodies of water shall be referred to as “Outstanding Arizona Waters”. Current Water Quality Standards For Surface Waters are available on the Arizona Secretary of State website (http://azsos.gov/public_services/Title_18/18-11.pdf).
The following are currently classified as Unique Waters (from R18-11-112(E), Arizona Administrative Code):

Apache County

- The West Fork of the Little Colorado River, from its headwaters to Government Springs at Latitude 33º 59' 33" / Longitude 109º 27' 54".
- Lee Valley Creek, from its headwaters to confluence with Lee Valley Reservoir.
- Hay Creek, from its headwaters to its confluence with the West Fork of the Black River.
- Stinky Creek, from the White Mountain Apache Indian Reservation boundary to its confluence with the West Fork of the Black River.

Cochise County
- Cave Creek from the headwaters to the Coronado National Forest boundary.
- South Fork of Cave Creek from its headwaters to its confluence with Cave Creek.

Coconino County
- Oak Creek from its headwaters to confluence with the Verde River.
- West Fork of Oak Creek from its headwaters to confluence with Oak Creek.

Gila County
- (Proposed) Fossil Creek, from its headwaters at the confluence of Sandrock and Calf Pen Canyons above Fossil Springs to its confluence with the Verde River.

Graham County
- Bonita Creek, from the boundary of the San Carlos Indian Reservation to its confluence with the Gila River.
- Aravaipa Creek, from its confluence with Stowe Gulch at Latitude 32º 52' 10" / Longitude 110º 22' 03" to the downstream boundary of Aravaipa Canyon Wilderness Area at Latitude 32º 54' 23" / Longitude 110º 33' 42".

Greenlee County
- Bear Wallow Creek, from its headwaters to the boundary of the San Carlos Indian Reservation.
- North Fork of Bear Wallow Creek, from its headwaters to confluence with Bear Wallow Creek.
- South Fork of Bear Wallow Creek, from its headwaters to confluence with Bear Wallow Creek.
- Snake Creek, from its headwaters to its confluence with the Black River.
- KP Creek, from its headwaters to its confluence with the Blue River.

Mohave County
- Francis Creek, from its headwaters to its confluence with Burro Creek.

Pima County
- Cienega Creek, from confluence with Gardner Canyon and Spring Water Canyon to USGS gaging station at Latitude 32º 02 ' 09" / Longitude 110º 40' 36".
- Buehman Canyon Creek, from its headwaters to confluence with unnamed tributary at Latitude 32º 24' 31.5"/ Longitude 110º 32' 08".
- Aravaipa Creek, from its confluence with Stowe Gulch at Latitude 32º 52' 10" / Longitude 110º 22' 03" to the downstream boundary of Aravaipa Canyon Wilderness Area at Latitude 32º 54' 23" / Longitude 110º 33' 42".

Yavapai County
- Oak Creek from its headwaters to confluence with the Verde River.
- Peoples Canyon Creek from its headwaters to confluence with the Santa Maria River.
- Burro Creek, from its headwaters to confluence with Boulder Creek.
- Francis Creek, from its headwaters to its confluence with Burro Creek.

Tribal Waters: All waters of the United States occurring on tribal lands.

Unique Waters: Now known as “Outstanding Arizona Waters”

F. Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration, establishment (creation), enhancement, or preservation of aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Discharge: The term ''discharge'' means any discharge of dredged or fill material.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of ''open waters'' include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the

activity is authorized by nationwide permit.

Preservation*:* The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment*:* The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area.

Rehabilitation*:* The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration*:* The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: Re-establishment and rehabilitation.

Riffle and pool complex*:* Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas*:* Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects waterbodies with their adjacent uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 20.)

Shellfish seeding*:* The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete project*:* The term ''single and complete project'' is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete project must have independent utility (see definition). For linear projects, a ''single and complete project'' is all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Stormwater management*:* Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities*:* Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed*:* The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization*:* The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure*:* An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland*:* A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

Vegetated shallows*:* Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody*:* For purposes of the NWPs, a waterbody is a jurisdictional water of the United States that, during a year with normal patterns of precipitation, has water flowing or standing above ground to the extent that an ordinary high water mark (OHWM) or other indicators of jurisdiction can be determined, as well as any wetland area (see 33 CFR 328.3(b)). If a jurisdictional wetland is adjacent—meaning bordering, contiguous, or neighboring— to a jurisdictional waterbody displaying an OHWM or other indicators of jurisdiction, that waterbody and its adjacent wetlands are considered together as a single

aquatic unit (see 33 CFR 328.4(c)(2)). Examples of ‘‘waterbodies’’ include streams, rivers, lakes, ponds, and wetlands.

G. References

2007 Nationwide Permits, March 12, 2007, 72 FR 11092
Corrections to Nationwide Permits, May 8, 2007, FR 26082
Special Public Notice, Regional Conditions for the Los Angeles District, May 18, 2007
ADEQ correspondence, May 14, 2007
EPA correspondence, January 17, 2007
Hualapai Tribe correspondence, May 25, 2007
Navajo Nation EPA correspondence, March 16, 2007
White Mountain Apache Tribe correspondence, April 27, 2007

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

JAN 1 7 2007

General John McMahon
Division Engineer, South Pacific Division
U.S. Army Corps of Engineers
333 Market St.
San Francisco, CA 94105

Subject: Conditional Clean Water Act (CWA) §401 certification of the 2007 Nationwide Permits (NWPs) for projects on applicable tribal lands

Dear General McMahon:

EPA Region 9 has reviewed the Corps' 26 September 2006 Federal Register notice *Proposal to Reissue and Modify Nationwide Permits* (FR Notice) pursuant to our roles and responsibilities under sections 401 and 404 of the CWA. The purpose of this letter is to provide conditional water quality certification of the NWPs for activities proceeding on tribal lands within Region 9. These conditions do not apply, however, to activities proceeding in the territories of the seven tribes within Region 9 which have been approved as certifying authorities—the Navajo Nation, Hualapai Nation, and White Mountain Apache Tribe in Arizona; and the Hoopa Valley Tribe, Bishop Paiute Tribe, Big Pine Paiute Tribe, and Twenty-Nine Palms Band in California.

As a general matter, we are concerned that the proposed changes to the NWP may lack adequate safeguards against degradation of aquatic resource functions and values, including protection of water quality and beneficial uses. A number of NWP characteristics may cause more than minimal adverse effects to aquatic resources including lack of maximum impact thresholds; authorization of broad, unrelated activities; and terminology that invites varying interpretation by permittees without Corps oversight. We believe the NWPs, as newly proposed, could weaken the program through relaxed reporting standards (*e.g.*, for applicants' explicit avoidance and minimization of discharges of pollutants), and by placing greater burdens on Corps staff to ensure permittees are in compliance.

In addition, EPA does not believe that the Corps has collected data sufficient to demonstrate that the NWP program results in minimal adverse impacts to the aquatic environment on an individual or cumulative basis. The lack of required Preconstruction Notifications (PCN)s, or any mandatory reporting for nearly half of the NWPs, is one of several factors which have precluded detailed programmatic analysis of the aerial extent, location, and type of aquatic resources impacted within a watershed context. These issues should be of paramount concern to the Corps given that Corps data indicate approximately 88% of the authorizations under the §404 program are implemented via General Permits—chiefly, the NWPs.

To protect water quality and beneficial uses of waters of the U.S. on tribal territories under the new NWP program, EPA Region 9 hereby institutes the attached general and permit-specific conditions pursuant to section 401 of the Clean Water Act. In summary, we are programmatically certifying thirty of the NWPs with general conditions, and certifying fifteen of the NWPs with permit-specific conditions (including new NWPs A, E and F). In addition, we are requiring that all permittees submit notification to EPA Region 9 when proceeding under any of the NWPs on tribal lands.

With the implementation of the enclosed general and permit-specific conditions, we are also reducing the number of NWPs denied certification (previously twelve, we are now denying certification for four permits: NWP 43, and new NWPs B, C and D). Applicants proposing activities on tribal lands under NWPs for which certification has been denied should preferably pursue alternative forms of authorization from the Corps (*e.g.*, individual permit, Letter of Permission, etc.). If this is not practical, these applicants must pursue individual project certification from EPA. A summary table at the end of the attached certifications and conditions is provided for easy reference to the status of all NWPs on tribal lands.

This conditional certification of the NWP program will remain in effect for the authorization period of the new NWPs, and will be revisited and potentially revised when the NWPs are next revisited and potentially revised by the Corps (*i.e.*, 2011). If you have any questions regarding our conditional certification of the NWPs for activities on tribal lands, you may contact me at 415-972-3572, or Jason Brush of my staff at 415-972-3483.

Sincerely,

Alexis Strauss 17 January 2007

Alexis Strauss
Director, Water Division

Cc:
Jane Hicks, Regulatory Branch Chief, San Francisco District
Michael Jewel, Regulatory Branch Chief, Sacramento District
David Castanon, Regulatory Branch Chief, Los Angeles District
Donald Borda, Regulatory Branch Chief, Albuquerque District

General Conditions

01. Classes of Aquatic Resources

Jurisdictional aquatic resources of all hydrological regimes are explicitly included in all general and permit-specific conditions to follow. In recognition of the importance of seasonal, ephemeral and intermittent waters for the protection and maintenance of water quality and other ecosystem services in the arid southwest, this certification hereby adopts the Corps' proposed inclusion of ephemeral and intermittent streams in the impact limitations listed throughout the 2007 NWPs. If any of the final NWPs assign impact limitations differently by hydrological regime (*e.g.*, allowing ¼ acre impacts to perennial systems and ½ acre to intermittent or ephemeral under the same NWP), the more protective standard shall apply under this certification universally to all covered waters (in the example above, therefore, no more than ¼ acre of impacts would be authorized to either perennial or ephemeral/intermittent waters).

02. Notification

To improve the government's ability to demonstrate whether the NWP program has minimal adverse impacts to the aquatic environment, individually and cumulatively, all NWP-authorized projects proceeding on tribal lands within Region 9 shall submit a form of notification to EPA Region 9.[1]

Under existing NWP rules, for the purposes of PCN notification, projects proposing to use a given NWP will fall under one of the following four categories:

1. The Corps requires a PCN, subject to criteria in the Corps' General Condition 27, because the project proposes use of an NWP that requires a PCN for <u>any</u> activities authorized by the NWP.
2. The Corps requires a PCN, subject to criteria in the Corps' General Condition 27, because the project proposes to exceed impact thresholds triggering a PCN under the NWP.
3. The Corps does <u>not</u> require a PCN, because proposed impacts <u>fall below thresholds</u> identified in the NWP for a PCN.
4. The Corps does <u>not</u> require a PCN for <u>any</u> activities authorized under the NWP the applicant is proposing to use.

To be eligible for any NWP under this certification, applicants under any of the above categories are required to submit a notice to EPA. However, **no response or approval is required from EPA for the project to proceed under the NWP.** For categories 1 and 2 above, applicants must simply forward a second copy of the PCN already required by the Corps to EPA Region 9. For applicants in categories 3 and 4, a modified PCN (MPCN) must be submitted to EPA Region 9 subject to the following criteria:

1) ***Timing.*** Applicants shall submit an MPCN to EPA Region 9 as early as possible, and in advance of any authorization letter from the Corps allowing the applicant to proceed under a given NWP. However, upon review, EPA reserves the right to make

[1] NOTE: this requirement does not modify or eliminate existing Corps requirements regarding PCNs for projects proceeding on tribal lands (or elsewhere).

after-the-fact assessments of likely direct and indirect impacts to water quality and may require mitigation. EPA shall make any such determinations, in writing, within 45 days of receipt of the MPCN.

2) ***Content.*** MPCNs must be in writing (electronic mail submittal is acceptable) and include the following information:
   a) Name, address and telephone numbers of the applicant and any agents or representatives. If available, the electronic mail address and fax numbers for these persons.
   b) Location of the proposed project.
   c) A description of the proposed project and impacts including
      i) the project's purpose;
      ii) direct and indirect adverse environmental effects the project would cause, including the proposed acreages of waters impacted, avoided, and, where applicable, created or otherwise mitigated;
      iii) any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity; and
      iv) a list of other state, tribal and federal permits or authorizations necessary for the project.

      The description should be sufficiently detailed to determine compliance with NWP and EPA 401 conditions and the need for appropriate compensatory mitigation. Maps, drawings and/or photographs of the project area and aquatic resources are not mandatory, but usually help to clarify the project and allow for faster review. At minimum, a narrative description of any special aquatic sites and other waters of the United States on the project site must be included.
   d) A statement describing impact avoidance and minimization measures, as required by EPA General Condition 03 of the CWA §401 certification of the 2007 NWP program.
   e) To the extent not covered by d) above, a statement describing how the project will protect, and where practicable improve, water quality.
   f) The name(s) of any species listed as endangered or threatened under the Endangered Species Act which may be adversely affected by the proposed work, either directly or by impacting designated critical habitat.
   g) Identification of any cultural or historic properties listed in, or eligible for listing in, the National Register of Historic Places that may be adversely affected by the proposed work.

03. Mitigation

Mitigation begins with the avoidance and minimization of adverse impacts to waters, followed by compensatory measures if a loss of aquatic function or acreage is unavoidable. Proposed modifications to the NWP program include the removal of explicit reference to avoidance, minimization and compensation in the body of several permits in favor of generally less explicit, less protective language in General Condition 20. For example, in many of the proposed NWPs, mitigation activities that had been required of the permittee would become discretionary on the part of the District Engineer (and for nearly half of the NWPs, the DE does not receive a PCN from the permittee and is thus precluded from exercising this discretion).

To protect water quality and beneficial uses of U.S. waters on tribal lands, all projects using NWPs must avoid discharges to the maximum extent practicable, and utilize the best available and practicable means of minimizing the adverse impact of discharges that cannot be avoided. A statement documenting the project's avoidance and minimization methodology will be provided to EPA and the Corps with each PCN (pursuant to Corps General Condition 27, paragraphs (a)(3) and (a)(5)), or MPCN. To the extent practicable, impact sites will be returned to pre-construction contours and, if necessary, banks shall be reseeded or replanted with native vegetation. Maintenance and monitoring activities will include regular and post-storm event inspections, on a schedule determined by the applicant's discretion, but no less frequent than once per year. Inspections should include photographs of culvert conditions after any heavy rainfall as well as conditions pre- and post-construction. Any adverse impacts to water quality resulting from the gradual or immediate failure of project or mitigation components shall be reported to EPA and the Corps immediately.

In some cases, compensatory mitigation may be required in addition to the avoidance and minimization measures outlined above. When required, compensatory mitigation will be implemented on a minimum 2:1 basis (acres created and/or enhanced: acres impacted) for impacts to special aquatic sites, and 1:1 (no net loss) for all other waters of the U.S. Except under unusual circumstances as approved by EPA, upland buffers, vegetated where practicable, shall be maintained around impacted and restored, created or enhanced waters, and will extend a minimum of 50 feet laterally from the Ordinary High Water Mark of each bank, or perimeter of a jurisdictional wetland. Representatives of EPA and the Corps must be allowed access to the site to inspect the project area and any mitigation areas upon reasonable notice.

Should EPA determine that compensatory measures are required, said determination shall not delay a project proceeding under a NWP, nor is a determination on this matter in response to an applicant's MPCN required to begin work (see General Condition 02. Notification, above). When they are appropriate, these determinations for compensatory mitigation will therefore likely be after-the-fact, but nevertheless will remain a condition of water quality certification and thus a condition of the Corps' permit. Failure to address an EPA mitigation requirement would therefore place a permittee out of compliance with their NWP and potentially subject to a range of Corps and EPA enforcement actions.

04. Prohibition on Multiple Use of One NWP for a Single Project

Permittees may not use the same NWP multiple times for one single and complete project; to do so effectively eliminates acreage limitations of the NWPs and may result in more than minimal adverse impacts to water quality and other ecosystem services. For example, under this certification, linear transportation projects on tribal lands must sum the impacts of each proposed crossing of individual waters of the U.S. and use that total to determine eligibility for NWP 14 (Linear Transportation Projects). If the acreage or linear foot impacts exceed the thresholds of the applicable NWP (or combination of applicable *different* NWPs), minimal adverse impacts to water quality may be exceeded and 401 certification is automatically denied without prejudice. In this event, the NWP in question is not available to the applicant on tribal lands. Applicants in these circumstances may need to apply to the Corps for authorization under a different General Permit, a Letter of Permission, or Individual Permit as appropriate and

determined by the Corps. EPA would review these other proposed permit actions for case-by-case certification. However, EPA may waive this requirement and allow the use of multiple NWPs on a case-by-case basis if the applicant so appeals, and demonstrates in their PCN or MPCN that authorization under the NWP will result in minimal and/or completely mitigated impacts to the aquatic environment, individually and cumulatively. EPA's discretionary waiver of this requirement may be accomplished informally via electronic mail to the Corps and applicant.

05. Use of Appropriate Fill Material

To the extent practicable, local, native materials should be used as fill material. (*e.g.*, soil, sand, or rock from the site or near the site; clean building materials or clean imported earthen fill). Inappropriate and unauthorized fill materials include, but are not limited to: tires, junked or abandoned vehicles, appliances, or other equipment; garbage; debris; oil drums or other chemically contaminated vessels; artificial turf; non-native vegetation; etc. If an applicant has any doubts or questions about the suitability of a proposed fill material, they should consult with the Corps and/or EPA prior to discharging into waters of the U.S. Such consultation may be via phone, or written letter, fax or electronic mail.

06. Dewatered Conditions

In-channel work will not be performed proximate in time to high flow events or rainy periods; discharges must occur and be completed prior to a minimum 5-day clear weather forecast. To the extent practicable, discharges below the ordinary high water mark or within jurisdictional wetlands should occur when the discharge site is naturally dewatered (*e.g.*, seasonally dry), or artificially dewatered by the permittee, thereby avoiding direct discharge of pollutants into the water column. If the site is artificially dewatered, permittees shall, to the extent practicable, avoid dewatering techniques that require additional temporary or permanent discharges of fill material within jurisdictional waters (*e.g.* coffer dams) in favor of temporary, structural techniques (*e.g.*, sheet pile or "porta-dams").

07. Fills Within 100-Year Floodplains

Projects requiring NWP authorization for discharges of fill material within 100-year floodplains shall comply with Executive Order 11988 (Floodplain Management). Such projects shall include a statement of compliance in the PCN. However, discharges within the FEMA-mapped 100-year floodplain that would result in permanent, above-grade structures are not certified for use under the NWP program on tribal lands.

08. Best Management Practices

Any excess material from construction, demolition wastes, wastewater, or any other pollutant must be appropriately disposed of outside jurisdictional waters. Water used in dust suppression shall not contain contaminants that could violate surface water or aquifer standards. Permittees and their contractors shall take necessary steps to minimize channel and bank erosion within waters of the United States during and after construction. Silt fences, straw wattles, and other techniques shall be employed as appropriate to protect waters of the U.S. from sedimentation and other pollutants. A copy of these permit conditions shall be provided to all contractors and subcontractors, and will be posted visibly at project construction sites.

09. Transportation Projects

Permittees shall implement State transportation agencies' guidelines for construction sites to protect water quality and aquatic habitat. In California, CALTRANS has guidance in the *CALTRANS Storm Water Quality Manuals and Handbooks*[2]; in Nevada, NDOT has guidance in their *NDOT 2006 Water Quality Manuals*[3]; and in Arizona, ADOT has guidance in their *Erosion and Pollution Control Manual*.

10. Utility Line Projects

Permittees shall implement BMPs established by the Office of Pipeline Safety and recommended for permit streamlining of pipeline maintenance and repair projects.[4] Projects include below and above grade utility installation and maintenance and repair.

Specific Nationwide Permits

NWP-01 Aids to Navigation

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-02 Structures in Artificial Canals

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-03 Maintenance

"Existing serviceable structures" which may be maintained under this permit do not include undersized culverts or structures that cause or exacerbate channel incision, bank destabilization, and/or prevent fish passage due to inadequate design or construction standards. Such structures continuously impair the hydrologic, sediment transport, and habitat functions of waters by remaining in place, and their maintenance under this NWP would discourage applicants from replacing inappropriately designed structures that require frequent maintenance and degrade water quality. Certification of this permit is granted only if the existing structure proposed to be maintained demonstrably preserves (via design, flow modeling or other information in the PCN) the natural functions of the affected aquatic resource when the structure is fully operational. Otherwise, an alternative permit should be utilized as appropriate (*e.g.*, NWP 13 Bank Stabilization). Where bank stabilization structures are to be maintained, bioengineered structures shall be utilized to the extent practicable in lieu of "rip-rap" or other hardscape engineered materials. This permit shall not authorize the enlargement of, or increase in, the footprint of a structure within waters of the U.S., unless that enlargement consists of the replacement of existing artificial channel armoring materials (*e.g.* rip-rap, soil cement, etc.) with low-impact bioengineered natural channel design structures (*e.g.*, log revetments, geotextile rolls/mats, root wads, brush mattresses, willow wattling, etc.[5]).

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[2] http://www.dot.ca.gov/hl/construc/stormwater/manuals.htm

[3] http://www.nevadadot.com/reports_pubs/Water_Quality/

[4] http://environment.ops.dot.gov

[5] See, *e.g.*, Allen, H. A., and Leech, J. R. (1997). "Bioengineering for Streambank Erosion Control-Report 1: Guidelines," Technical Report EL-97-8, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS.

NWP-04 Fish and Wildlife Harvesting, Enhancement and Attraction

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-05 Scientific Measurement Devices

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-06 Survey Activities

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-07 Outfall Structures and Maintenance

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-08 Oil and Gas Structures

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-09 Structures in Fleeting and Anchorage Areas

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-10 Mooring Buoys

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-11 Temporary Recreational Structures

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-12 Utility Line Activities

According to the cumulative impact analysis in the Corps' Draft Environmental Assessment (DEA), this permit is the second most commonly used of the Nationwides, and use of this permit results in a net loss of aquatic resources (estimated at 684 acres/year with zero acres of compensation). Proposed changes to this NWP include the removal of PCN requirements for a broad range of activities. In compliance with EPA General Condition 02. Notification above, applicants will provide a PCN for all activities under this NWP, and will clearly indicate the impacts proposed to be temporary, permanent, or secondary (*e.g.*, conversion of one type of aquatic resource to another). No more than ½ acre or 300 linear feet of permanent loss of waters is authorized under this certification.

NWP-13 Bank Stabilization

The Corps provides no rationale for the proposed 500-foot limitation on this permit (the programmatic standard is otherwise 300 feet). Under this certification, the 300-foot limit is retained. The proposed modification to allow use of NWP-13 in special aquatic sites is counter to the purposes of the permit (bank protection), as it would contribute to losses of riparian fringe wetlands important for maintenance of natural channel geomorphology, flood attenuation, and water filtration services. Under this certification, this permit is not available for projects in special aquatic sites. Traditionally, this NWP, used multiple times at the same site or in combination with other NWPs, has frequently resulted in the armoring of many miles of streambank. However, with adherence to EPA general condition 04. above, this problem should be reduced or eliminated. Bank stabilization must incorporate use of planting and/or seeding of

native vegetation; bioengineered solutions should be employed to the maximum extent practicable. Hard channel armoring is discouraged under this certification, and is more likely to require compensatory mitigation. In their PCN, applicants should pay particular attention to describing avoidance, minimization and/or compensation measures.

NWP-14 Linear Transportation Projects

According to the DEAs, this NWP authorizes activities that result in a net loss of aquatic resources. The Corps' proposed removal of language in the permit regarding compensatory mitigation will exacerbate these losses, especially given the lack of a linear foot limitation and lack of any programmatic estimate of indirect and secondary effects or mitigation for those impacts. In our experience, many permittees use multiple NWP-14 permits for one project, thus impacting substantially more than a ½ acre of waters in sum. Due to the significant secondary adverse effects often caused by culverts (*e.g.*, upstream deposition and bank erosion, downstream bed and bank erosion) lower-impact techniques (*e.g.*, bottomless and embedded culverts) are encouraged. Consistent with other NWPs, this permit is limited under this certification to the lesser of ½ acre or 300 linear feet of impacts. Applicants' PCNs or MPCNs should specifically address sequencing avoidance and minimization of impacts in project design, and address potential indirect effects up and downstream of the proposed discharges.

NWP-15 U.S. Coast Guard Approved Bridges

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-16 Return Water from Upland Contained Disposal Areas

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-17 Hydropower Projects

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-18 Minor Discharges

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-19 Minor Dredging

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-20 Oil Spill Cleanup

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-21 Surface Coal Mining Activities

We are concerned that the lack of impact limitations under this NWP results in a net loss of aquatic resources (the Corps' cumulative impact analysis in the DEA indicates this permit results in 81 acres of impact per year without compensation). A review of activities authorized by this permit would likely show that many of these impacts are permanent and occur in important and sensitive headwater streams. Consistent with other NWPs, impacts authorized by this permit shall be limited to the greater of ½ acre or 300 linear feet of waters under this certification. Before an applicant may use this permit, EPA must approve a compensatory

mitigation plan meeting all of the criteria set forth in the national *Mitigation Action Plan*[6] including a minimum replacement-to-impact ratio of one-to-one (minimum two-to-one for special aquatic sites). Similar plans which may be required by the Interior Department's Office of Surface Mining under the Surface Mining Control and Reclamation Act may be presented for EPA approval as functionally equivalent.

NWP-22 Removal of Vessels

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-23 Approved Categorical Exclusions

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-24 Indian Tribe or State Administered Section 404 Program

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-25 Structural Discharges

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-26 --Reserved--

This NWP is no longer in use. No certification is necessary.

NW-27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities

We are concerned that the lack of reporting, impact limits, and clear language in this permit contribute to its misuse and authorization of more than minimal adverse impacts to the aquatic ecosystem. Corps data indicate this permit accounts for the greatest level of impacts in the entire program, exceeding the next highest permit's impacts by a factor of 2.5, and experience has shown that permittees may use this permit for activities that are not truly restoration projects and/or do not result in a net benefit to aquatic functions. Recreational aquatic features are not authorized under this NWP (*e.g.*, water parks such as kayak courses). This permit may not be used to authorize stormwater control structures for the purpose of reducing downstream erosion, water quality degradation or flooding, and grade control structures may not exceed one linear foot vertical drop unless it is clearly demonstrated that a greater drop is necessary to restore aquatic resource functions. Concrete and grout are not acceptable fill materials under this NWP and certification. Any structures placed within waters will allow the passage of aquatic organisms and preserve existing human navigational needs, unless removal of such existing navigational uses is part of the project purpose.

Consistent with other NWPs, use of this permit shall be limited to the lesser of ½ acre or 300 linear feet of waters under this certification. This requirement may frequently be waived upon petition in the applicant's PCN, but these limits will ensure the added level of scrutiny required to eliminate misuse of this permit and greatly reduce the impact of the program as a whole.

NWP-28 Modification of Existing Marinas

Subject to the General Conditions above, this NWP is hereby programmatically certified.

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[6] http://www.mitigationactionplan.gov/

NWP-29 Single-family Housing

Much of NWP 39's residential components are proposed to be moved to NWP 29. EPA does not believe the activities currently authorized under NWP-29 are similar enough to multi-unit commercial/residential development to warrant this combination. This move would combine relatively modest activities, such as expanding a single-family home or constructing attendant features (*e.g.*, a garage, driveway, storage shed, septic field) with much larger residential developments that are generally new, include a change in land-use, and are much larger in scope and purpose. If these permits are combined as proposed, then the impact threshold for single-family homes shall remain ¼ acre under this certification (not increase to ½ acre, as proposed).

In addition to avoidance and minimization requirements explained above under EPA General Condition 03., paragraph "f" from NWP-39 shall also attach under this certification, explaining that compensatory mitigation will "normally" be required for unavoidable losses. Existing text regarding maintenance of vegetated buffers shall remain. Finally, "recreational facilities such as playgrounds, playing fields, and golf courses" are not authorized under this certification. These projects are separate and distinct from housing, are not required to be included in a housing project for it to be practicable, and their construction within waters is normally avoidable. This NWP shall not authorize the channelization or relocation of any stream or wetland, regardless of size or rate of flow.

NWP-30 Moist Soil Management for Wildlife

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-31 Maintenance of Existing Flood Control Facilities

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-32 Completed Enforcement Actions

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-33 Temporary Construction, Access and Dewatering

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-34 Cranberry Production Activities

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-35 Maintenance Dredging of Existing Basins

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-36 Boat Ramps

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-37 Emergency Watershed Protection and Rehabilitation

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-38 Cleanup of Hazardous and Toxic Waste

Subject to the General Conditions above, this NWP is hereby programmatically certified.

NWP-39 Residential, Commercial, and Institutional Developments

As with NWP 29 above, existing requirements for "avoidance and minimization," "single and complete project," "maintenance of buffers," and "compensatory mitigation," which the Corps now proposes to remove, shall be retained for purposes of this certification. This NWP shall not authorize the channelization or relocation of any stream or wetland, regardless of size or rate of flow.

NWP-40 Agricultural Activities

We are concerned that the text of NWP-40 and proposed modifications will cause more than minimal impacts to aquatic resources. Consistent with the other NWPs, ephemeral and intermittent waters shall not be subject to waiver of the 300 foot limitation under this certification. Activities authorized by this NWP, such as construction of drainage tiles, ditches, and relocation of existing serviceable structures, may be used to convert wetlands to uplands in preparation for future development. These activities could have a considerable indirect impact on aquatic resources that would go undetected under the proposed NWP terms. Under this certification, no discharges are authorized which would impact hydrological connectivity between jurisdictional waters to such an extent as to convert waters of the U.S. to uplands, or otherwise isolate waters to eliminate federal regulatory jurisdiction.

NWP-41 Reshaping Existing Drainage Ditches

We are concerned that the text of this NWP and proposed modifications will result in more than minimal impacts to aquatic resources. The cumulative impact analysis provided in the DEA suggests that this permit results in a net loss of waters. Consistent with other NWPs, impacts under this certification are limited to the lesser of ½ acre or 300 feet of waters. As with NWP-C below, allowing sidecasting of dredged material into waters of the United States will cause and contribute to degradation of water quality as sediment is re-suspended in the water column. Sediment problems are among the most common water quality problems in the nation. This NWP assumes that returning a drainage ditch to its original configuration will improve water quality, but lacks guidance or standards that describe methods for demonstrating an improvement in water quality. All "sidecast" materials from excavation must be stored and/or disposed of within non-jurisdictional uplands under this certification. A statement must be included in the notification as to how the applicant's activities will improve water quality.

As with NWP-40 above, we are concerned that this NWP will have significant indirect adverse affects on waters of the U.S. by draining wetlands upstream in an attempt to convert large wetland areas to developable uplands through relatively small regulated discharges. These activities could have a considerable indirect impact on aquatic resources that would go undetected under the NWP terms. Under this certification, no discharges are authorized which would impact hydrological connectivity between jurisdictional waters to such an extent as to convert waters of the U.S. to uplands, or otherwise isolate waters to eliminate federal regulatory jurisdiction.

NWP-42 Recreational Facilities

As a general matter, recreational facilities such as those listed by the Corps in discussion of this NWP (FR Notice p. 56272-3) are not water-dependent (*e.g.*, golf courses, playing fields, basketball courts), and impacts to waters of the U.S. should be avoidable. This is especially true in the most common cases (according to the Corps) where "the proposed project area is predominantly uplands." However, given the notification requirements herein, and subject to a 300 foot or ½ acre limit, this NWP is hereby programmatically certified. Under this certification, waiver of the impact limits for ephemeral streams is not permitted.

NWP-43 Stormwater Management Facilities

NWP authorization of constructing stormwater facilities within waters of the U.S. discourages applicants from using practicable construction options that locate stormwater retention and detention facilities "off line" from streams. For example, retention facilities are often built as sediment (or debris) basins within a stream. This practice includes constructing a dam in the stream, excavating out a basin, and regular sediment removal to maintain the structure. These facilities cause considerable and unnecessary damages to stream functions as retention facilities can be located "off line" by constructing a high flow diversion channel above the ordinary high water mark. If applicants can continue to use the traditional, more damaging practices that are sanctioned by this NWP, there is no incentive for these management practices to improve. Although maintenance of existing facilities may be necessary, we do not believe NWP-43 for new facilities complies with the CWA Section 404(b)(1) Guidelines.

CWA section 401 Water Quality certification for this proposed NWP is denied without prejudice. Applicants for projects on tribal lands must apply, via MPCN, to EPA for individual certification if this NWP is proposed to be used.

NWP-44 Mining Activities

We are concerned that activities authorized by this NWP will have a more than minimal adverse effect on aquatic resources. As proposed, this NWP could authorize in-stream mining operations impacting more than a mile of a 4-foot wide stream, exacerbated by indirect effects up and downstream of the discharges such as headcutting and downcutting. This permit is certified only for impacts up to 300 linear feet or ½ acre, consistent with other NWPs. When used for in-stream aggregate mining activities, compensatory mitigation is likely to be required due to extensive indirect impacts and temporal losses typical of this type of impact.

Proposed New Permits

NWP-A Emergency Repair Activities

This permit as proposed places no limits on project scale or scope of impacts, discharge or excavation volumes, or length of banks that may be "reconstructed." The ambiguous language of the proposed permit may be read to authorize repeated excavation activities within waters and permanent stabilization of stream banks, both of which will frequently entail more

than minimal adverse impacts to the aquatic resource. The proposed permit may be used following "recent storms, floods, or other discrete events." Clearly, the lack of a definition of "other discrete events" invites wide and varying interpretation. Flashy events with significant flows are routine in much of the arid southwest. Under this permit, regular invasive hydrological modification of ephemeral or intermittent streams could be authorized after each of these normal storm events. We believe this NWP is inappropriate and should not be issued; in our experience, "Emergency Repairs" are best handled via Regional General Permits through local Corps Districts.

Under this certification, impacts shall be limited to 300 linear feet or ½ acre, consistent with other NWPs, and the permittee's MPCN must contain a description of the CWA permitting history of the site. We understand that certain emergencies (*e.g.* rapidly eroding banks during a storm event) may require the immediate placement of hard materials such as riprap into waters of the U.S. to protect public safety or property. However, if these materials are placed on an immediate emergency basis in lieu of bioengineered structures that maintain natural channel geomorphology (see NWP 13 and footnote 5 for examples), applicants are required to submit a restoration plan for the project site, to ensure that the aquatic functions and values of the site are ultimately restored.[7] This permit does not authorize the permanent discharge, retention or maintenance of riprap or other hardscape bank armoring, unless the applicant clearly demonstrates that these materials are appropriate and protect biological and hydrological functions. The MPCN must include an analysis explaining the reasons for site failure (i.e., the "emergency" situation). If restoration is impracticable, the MPCN must include documentation that the proposed repair is an appropriate long-term solution for the project site.

NWP-B Discharges in Ditches and Canals

From the discussion in the FR Notice (p. 56274), the purpose of this NWP is to "allow a landowner to return his or her land to its prior condition" if the ditches in question are "(1) constructed in uplands; (2) receive water from another water of the United States; and (3) divert water to another water of the United States." Thus, restoration to the "prior condition" is to convert a water of the U.S. to non-jurisdictional uplands (per criterion one), and eliminate hydrological connectivity and/or isolate down- and up-stream waters (per criteria two and three). As with NWPs 40 and 41 above, we believe it prudent to apply the same conditions that such effects are prohibited, but as they appear to be the purpose of the permit, it is difficult to place appropriate conditions on this permit outside the context of a specific project proposal.

CWA section 401 Water Quality certification for this proposed NWP is denied without prejudice. Applicants for projects on tribal lands must apply, via MPCN, to EPA for individual certification if this NWP is proposed to be used.

NWP-C Pipeline Safety Program Designated Time-Sensitive Inspections and Repairs

According to the DEA, Corps' surveys suggest that this permit would result in the loss of ~320 acres of waters of the United States over the next 5 years. There is no anticipated compensation for these losses. It is unclear how this NWP advances the programmatic "no net loss/net gain" goals or results in minimal impacts, individually or cumulatively. Criteria "b" allows material from trench excavation to be temporarily sidecast, threatening water quality for

[7] Additional permit authorization (*e.g.*, NWP 27) may be required.

at least three months. The Corps is not requiring PCNs for this permit, thereby preventing the Corps from determining how often it is used, what its impacts are, and when or if sidecast material has been removed. It is not clear that Corps will have access to the Pipeline Repair and Environmental Guidance System (PREGS) that records post construction reports. This NWP is also unique in that it proposes a prohibition on issuance of regional conditions, but there is no explanation or data supporting this dramatic policy change.

CWA section 401 Water Quality certification for this proposed NWP is denied without prejudice. Applicants for projects on tribal lands must apply, via MPCN, to EPA for individual certification if this NWP is proposed to be used.

NWP-D Commercial Shellfish Aquaculture Activities

As proposed, this permit would deviate from existing NWPs 4, 19, and 36 which prohibit activities in Submerged Aquatic Vegetation (SAV), with no explanation as to why this deviation would not result in minimal adverse impacts to SAV. The nature and types of discharges covered by this permit are not defined, inviting completely unrestricted use of the permit. Similarly, limits such as "existing project area" can be interpreted many ways and it is not clear from the proposed NWP text how the Corps intends the regulated public to understand the phrase.

CWA section 401 Water Quality certification for this proposed NWP is denied without prejudice. Applicants for projects on tribal lands must apply, via MPCN, to EPA for individual certification if this NWP is proposed to be used.

NWP-E Coal Remining Activities

Although efforts to restore lands disturbed by mining are encouraged, limiting impacts authorized under NWP 21 is preferable to creating a new NWP for remining and restoring these areas. Indeed, the perceived necessity of NWP-E suggests that NPW 21 may have more than minimal adverse effects on aquatic resources as proposed. If this permit is issued, its use is limited under this certification to ½ acre or 300 feet of waters, and limited to application at abandoned mine sites. Applicants must provide information in the PCN illustrating that activities authorized under NWP-E will result in a net increase in aquatic resource functions.

NWP-F Underground Coal Mining Activities

The lack of impact limits under this proposed NWP is likely to result in a net loss of aquatic resources. The cumulative impact estimate in the DEA indicates that NWP-F would result in 97 acres of impact per year and 11 acres of compensatory mitigation per year. A review of activities authorized by this permit would likely show that many of these impacts are permanent and occur in important and sensitive headwater streams. A 300 linear foot and ½ acre impact limit is required under this certification, consistent with other NWPs. A compensatory mitigation plan meeting all of the criteria set forth in the national *Mitigation Action Plan*, including a minimum replacement-to-impact ratio of one-to-one, is also required under this certification.

Summary Table – EPA §401 Certification of NWPs for projects on tribal lands				
NWP	**Certification Status**	**Notification required?***	**Impact Limits**	**Notes**
1	Certified, general conditions only	YES – MPCN	None	
2	Certified, general conditions only	YES – MPCN	None	
3	**Certified, permit conditions**	YES – (M)PCN	Generally no increase in fill footprint.	No maintenance of undersized structures; bioengineering used whenever practicable.
4	Certified, general conditions only	YES – MPCN	None	
5	Certified, general conditions only	YES – MPCN	25 yrd^3	
6	Certified, general conditions only	YES – MPCN	25 yrd^3	
7	Certified, general conditions only	YES – PCN	None	
8	Certified, general conditions only	YES – PCN	None	
9	Certified, general conditions only	YES – MPCN	None	
10	Certified, general conditions only	YES – MPCN	None	
11	Certified, general conditions only	YES – MPCN	None	
12	**Certified, permit conditions**	YES – (M)PCN	½ acre or 300'	Identify temporary impacts.
13	**Certified, permit conditions**	YES – (M)PCN	300' and <1 yrd^3 / running ft.	No use in special aquatic sites; bioengineered stabilization whenever practicable.
14	**Certified, permit conditions**	YES – (M)PCN	½ acre or 300'	Address indirect impacts.
15	Certified, general conditions only	YES – MPCN	None	
16	Certified, general conditions only	YES – MPCN	None	
17	Certified, general conditions only	YES – PCN	None	
18	Certified, general conditions only	YES – (M)PCN	1/10 acre or 25 yrd^3	
19	Certified, general conditions only	YES – MPCN	25 yrd^3	
20	Certified, general conditions only	YES – MPCN	None	
21	**Certified, permit conditions**	YES – PCN	½ acre or 300'	EPA approves mitigation plan before work.
22	Certified, general conditions only	YES – (M)PCN	None	
23	Certified, general conditions only	YES – (M)PCN	None	
24	Certified, general conditions only	YES – MPCN	None	
25	Certified, general conditions only	YES – MPCN	None	
26	N/A	N/A	N/A	N/A
27	**Certified, permit conditions**	YES – (M)PCN	½ acre or 300'	Fill material, project purpose limitations.
28	Certified, general conditions only	YES – MPCN	Authorized marina	
29	**Certified, permit conditions**	YES – PCN	¼ acre or 300'	No impact limit waivers, no recreational.
30	Certified, general conditions only	YES – MPCN	None	
31	Certified, general conditions only	YES – PCN	Corps-approved	
32	Certified, general conditions only	YES – MPCN	5 acres non-tidal, or 1 acre tidal wetlands	
33	Certified, general conditions only	YES – PCN	None	
34	Certified, general conditions only	YES – PCN	10 acres	No net loss of acreage permitted.
35	Certified, general conditions only	YES – MPCN	Lesser of previously authorized or controlling depths	
36	Certified, general conditions only	YES – (M)PCN	50 yrd^3; 20'-wide ramp	
37	Certified, general conditions only	YES – PCN	None	
38	Certified, general conditions only	YES – PCN	None	
39	**Certified, permit conditions**	YES - PCN	½ acre or 300'	
40	**Certified, permit conditions**	YES - PCN	½ acre or 300'	
41	**Certified, permit conditions**	YES – (M)PCN	½ acre or 300'	Water quality assessments in notification; sidecast material to uplands only.
42	**Certified, permit conditions**	YES – PCN	½ acre or 300'	No impact limit waivers.
43	**DENIED**	YES – (M)PCN	N/A	Must apply to EPA for individual cert.
44	**Certified, permit conditions**	YES – PCN	½ acre or 300'	
A	**Certified, permit conditions**	YES - PCN	½ acre or 300'	Site permit history, restoration plan required
B	**DENIED**	YES – (M)PCN	N/A	Must apply to EPA for individual cert.
C	**DENIED**	YES - MPCN	N/A	Must apply to EPA for individual cert.
D	**DENIED**	YES – (M)PCN	N/A	Must apply to EPA for individual cert.
E	**Certified, permit conditions**	YES – PCN	½ acre or 300'	
F	**Certified, permit conditions**	YES – PCN	½ acre or 300'	Compensatory mitigation plan required.

* "PCN" = Corps-required notification; "MPCN" = EPA-required notification, "(M)PCN" = either, depending on impact limits.